

AMENDED IN ASSEMBLY AUGUST 19, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 414

Introduced by Senator Jackson

(Principal coauthor: Assembly Member Williams)

February 25, 2015

An act to amend Sections 8670.12, 8670.13, 8670.28, and 8670.67.5 of, and to add Sections ~~8670.11, 8670.12.1, 8670.11~~ and 8670.13.3 to, the Government Code, relating to oil spill response.

LEGISLATIVE COUNSEL'S DIGEST

SB 414, as amended, Jackson. Oil spill response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup.

This bill would require the administrator, in cooperation with the United States Coast Guard, to ~~conduct an independent vessel traffic assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports and~~ *the extent possible*, to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator to develop and implement regulations and guidelines requiring operators to allow ~~immediate rapid~~ response to an oil spill by ~~contracted fishing vessels and fishing crews and providing for vessels of opportunity and provide for the means for them to participate in~~ regularly scheduled emergency ~~drills~~ *drills*, equipment deployment exercises, and training. The bill would require the administrator, on or before July 1, 2016, to submit to the Legislature a report ~~assessing~~ *assessing, among other things*, the best achievable technology ~~for~~ *of* equipment for oil spill prevention and response, *including an independent vessel traffic risk assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports*, as provided, and to update regulations based on the report before July 1, 2017.

(2) The act requires the administrator to study the use and effects of methods used to respond to oil spills and to periodically update the study to ensure the best achievable protection from the use of those methods.

This bill would require the administrator to update the California Dispersant Plan by January 1, 2017, and, in conducting the study and updates, to consult current peer-reviewed published scientific literature.

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills. ~~The federal Coastal Zone Management Act of 1972 (federal act) requires federal agency activities to be carried out in a manner that is consistent, to the maximum extent practicable, with an approved state management plan. Existing federal law authorizes the California Coastal Commission, the designated state agency, to conduct federal consistency review to ensure federal agency activities are consistent with the California Coastal Management Program.~~

~~The Marine Life Protection Act requires the Department of Fish and Wildlife to adopt a master plan to guide the adoption and implementation of the Marine Life Protection Program to protect the state's marine life, habitat, and ecosystem, and decisions on siting new Marine Protected Areas and major modifications of existing Marine Protected Areas.~~

This bill would ~~prohibit the use of chemical oil spill cleanup agents within the boundaries of California marine protected areas~~; *require the administrator, if dispersants are used in response to an oil spill, to submit to the Legislature a written justification for the use of dispersants and a report on the effectiveness of the dispersants used, as provided.*

(4) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

This bill would provide that the above reduction in the penalty for spills, including inland spills, of greater than 500 ~~gallons~~, *gallons* is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8670.11 is added to the Government
2 Code, to read:

3 8670.11. In addition to Section 8670.10, the administrator, in
4 cooperation with the United States Coast Guard, *to the extent*
5 *possible*, shall establish a schedule of drills and exercises required
6 pursuant to Section 155.4052 of Title 33 of the Code of Federal
7 Regulations. The administrator shall make publicly available the
8 established schedule.

9 SEC. 2. Section 8670.12 of the Government Code is amended
10 to read:

11 8670.12. (a) The administrator shall conduct studies and
12 evaluations necessary for improving oil spill response, containment,
13 and cleanup and oil spill wildlife rehabilitation in waters of the
14 state and oil transportation systems. The administrator may expend
15 moneys from the Oil Spill Prevention and Administration Fund
16 created pursuant to Section 8670.38, enter into consultation
17 agreements, and acquire necessary equipment and services for the
18 purpose of carrying out these studies and evaluations.

19 (b) The administrator shall, consulting current peer-reviewed
20 published scientific literature, study the use and effects of
21 dispersants, incineration, bioremediation, and any other methods

1 used to respond to a spill and, by January 1, 2017, update the
2 California Dispersant Plan. The study and plan shall periodically
3 be updated by the administrator, consulting current peer-reviewed
4 published scientific literature, to ensure the best achievable
5 protection from the use of those methods. Based upon substantial
6 evidence in the record, the administrator may determine in
7 individual cases that best achievable protection is provided by
8 establishing requirements that provide the greatest degree of
9 protection achievable without imposing costs that significantly
10 outweigh the incremental protection that would otherwise be
11 provided. The studies shall do all of the following:

12 (1) Evaluate the effectiveness of dispersants and other chemical,
13 bioremediation, and biological agents in oil spill response under
14 varying environmental conditions.

15 (2) Evaluate potential adverse impacts on the environment and
16 public health including, but not limited to, adverse toxic impacts
17 on water quality, fisheries, and wildlife with consideration to
18 bioaccumulation and synergistic impacts, and the potential for
19 human exposure, including skin contact and consumption of
20 contaminated seafood.

21 (3) Recommend appropriate uses and limitations on the use of
22 dispersants and other chemical, bioremediation, and biological
23 agents to ensure they are used only in situations where the
24 administrator determines they are effective and safe.

25 (c) The studies shall be performed ~~in conjunction~~ with
26 *consideration of* any studies performed by federal, state, and
27 international entities. The administrator may enter into contracts
28 for the studies.

29 ~~SEC. 3. Section 8670.12.1 is added to the Government Code,~~
30 ~~to read:~~

31 ~~8670.12.1. The administrator, in cooperation with the United~~
32 ~~States Coast Guard, shall conduct an independent vessel traffic~~
33 ~~risk assessment for all deepwater ports that may inform an area~~
34 ~~rescue towing plan for the approaches to the ports.~~

35 ~~SEC. 4.~~

36 ~~SEC. 3.~~ Section 8670.13 of the Government Code is amended
37 to read:

38 8670.13. (a) The administrator shall periodically evaluate the
39 feasibility of requiring new technologies to aid prevention,
40 response, containment, cleanup, and wildlife rehabilitation.

(b) (1) On or before July 1, 2016, the administrator shall submit a report to the Legislature, pursuant to Section 9795, assessing the best achievable technology of equipment for oil spill prevention and response, including, but not limited to, prevention and response tugs, tractor tugs, salvage and marine firefighting tugs, oil spill skimmers and barges, and protective in-water boom equipment.

The assessment shall include all of the following:

(A) ~~Evaluation of equipment based on its estimated system recovery potential.~~ *estimated recovery system potential as a methodology for rating equipment in comparison to effective daily recovery capacity.*

(B) ~~Updating~~ *If necessary, updating* the methodology for rating equipment, such as oil containment, skimming, storage and oil and water separation technologies, and an explanation of why the ~~new~~ *chosen* methodology provides the best achievable protection.

(C) Evaluation of the most current oil spill and response equipment for ~~increase~~ *increased* capability, including, but not limited to, new generation, high-efficiency disc skimmers, including high-efficiency skimming NOFI Current Busters, or their equivalent, and Elastec grooved disc skimmers, or their equivalent.

(D) Consideration of whether a purpose-built, prepositioned prevention and response tug with appropriate size, bollard pull, horsepower, propulsion, seakeeping, and maneuverability to meet Det Norske Veritas criteria for emergency towing would lead to increased capability to provide best achievable protection.

(E) *An independent vessel traffic risk assessment for all deepwater ports that may inform an area rescue towing plan for the approaches to the ports.*

(2) In conducting the assessment, the administrator shall consult the most recent peer-reviewed research on oil spill prevention and response, including, but not limited to, research performed by the Prince William Sound Regional Citizens' Advisory Council as well as estimated system recovery potential research done at Genwest Systems, Inc., and Spiltec.

(3) Pursuant to Section 10231.5, this subdivision is inoperative on July 1, 2020.

(c) (1) Based on the report prepared pursuant to subdivision (b), the administrator shall update regulations governing the adequacy of oil spill contingency plans for best achievable

1 technologies for oil spill prevention and response no later than
2 July 1, 2017.

3 (2) The updated regulations shall enhance the capabilities for
4 prevention, response, containment, cleanup, and wildlife
5 rehabilitation.

6 ~~SEC. 5.~~

7 *SEC. 4.* Section 8670.13.3 is added to the Government Code,
8 to read:

9 ~~8670.13.3. Notwithstanding any law, chemical oil spill cleanup~~
10 ~~agents shall not be used in response to an oil spill within the~~
11 ~~boundaries of any California marine protected area established~~
12 ~~pursuant to the Marine Life Protection Act (Chapter 10.5~~
13 ~~(commencing with Section 2850) of Division 3 of the Fish and~~
14 ~~Game Code).~~

15 *8670.13.3. If dispersants are used in response to an oil spill,*
16 *the administrator shall provide written justification for their use*
17 *to the Legislature within three days of the use. Within two months*
18 *of the use of dispersants, the administrator shall also provide a*
19 *report to the Legislature on the effectiveness of the dispersants*
20 *used, including, but not limited to, negative environmental impacts*
21 *caused by those dispersants. The written justification and report*
22 *shall be submitted pursuant to Section 9795.*

23 ~~SEC. 6.~~

24 *SEC. 5.* Section 8670.28 of the Government Code is amended
25 to read:

26 *8670.28. (a) The administrator, taking into consideration the*
27 *facility or vessel contingency plan requirements of the State Lands*
28 *Commission, the Office of the State Fire Marshal, the California*
29 *Coastal Commission, and other state and federal agencies, shall*
30 *adopt and implement regulations governing the adequacy of oil*
31 *spill contingency plans to be prepared and implemented under this*
32 *article. All regulations shall be developed in consultation with the*
33 *Oil Spill Technical Advisory Committee, and shall be consistent*
34 *with the California oil spill contingency plan and not in conflict*
35 *with the National Contingency Plan. The regulations shall provide*
36 *for the best achievable protection of waters and natural resources*
37 *of the state. The regulations shall permit the development,*
38 *application, and use of an oil spill contingency plan for similar*
39 *vessels, pipelines, terminals, and facilities within a single company*

1 or organization, and across companies and organizations. The
2 regulations shall, at a minimum, ensure all of the following:

3 (1) All areas of state waters are at all times protected by
4 prevention, response, containment, and cleanup equipment and
5 operations.

6 (2) Standards set for response, containment, and cleanup
7 equipment and operations are maintained and regularly improved
8 to protect the resources of the state.

9 (3) All appropriate personnel employed by operators required
10 to have a contingency plan receive training in oil spill response
11 and cleanup equipment usage and operations.

12 (4) Each oil spill contingency plan provides for appropriate
13 financial or contractual arrangements for all necessary equipment
14 and services for the response, containment, and cleanup of a
15 reasonable worst case oil spill scenario for each area the plan
16 addresses.

17 (5) Each oil spill contingency plan demonstrates that all
18 protection measures are being taken to reduce the possibility of
19 an oil spill occurring as a result of the operation of the facility or
20 vessel. The protection measures shall include, but not be limited
21 to, response to disabled vessels and an identification of those
22 measures taken to comply with requirements of Division 7.8
23 (commencing with Section 8750) of the Public Resources Code.

24 (6) Each oil spill contingency plan identifies the types of
25 equipment that can be used, the location of the equipment, and the
26 time taken to deliver the equipment.

27 (7) Each facility, as determined by the administrator, conducts
28 a hazard and operability study to identify the hazards associated
29 with the operation of the facility, including the use of the facility
30 by vessels, due to operating error, equipment failure, and external
31 events. For the hazards identified in the hazard and operability
32 studies, the facility shall conduct an offsite consequence analysis
33 that, for the most likely hazards, assumes pessimistic water and
34 air dispersion and other adverse environmental conditions.

35 (8) Each oil spill contingency plan contains a list of contacts to
36 call in the event of a drill, threatened discharge of oil, or discharge
37 of oil.

38 (9) Each oil spill contingency plan identifies the measures to
39 be taken to protect the recreational and environmentally sensitive

1 areas that would be threatened by a reasonable worst case oil spill
2 scenario.

3 (10) Standards for determining a reasonable worst case oil spill.
4 However, for a nontank vessel, the reasonable worst case is a spill
5 of the total volume of the largest fuel tank on the nontank vessel.

6 (11) Each oil spill contingency plan specifies an agent for service
7 of process. The agent shall be located in this state.

8 (b) The regulations and guidelines adopted pursuant to this
9 section shall also include provisions to provide public review and
10 comment on submitted oil spill contingency plans.

11 (c) The regulations adopted pursuant to this section shall
12 specifically address the types of equipment that will be necessary,
13 the maximum time that will be allowed for deployment, the
14 maximum distance to cooperating response entities, the amounts
15 of dispersant, and the maximum time required for application,
16 should the use of dispersants be approved. Upon a determination
17 by the administrator that booming is appropriate at the site and
18 necessary to provide best achievable protection, the regulations
19 shall require that vessels engaged in lightering operations be
20 boomed prior to the commencement of operations.

21 (d) The administrator shall adopt regulations and guidelines for
22 oil spill contingency plans with regard to mobile transfer units,
23 small marine fueling facilities, and vessels carrying oil as secondary
24 cargo that acknowledge the reduced risk of damage from oil spills
25 from those units, facilities, and vessels while maintaining the best
26 achievable protection for the public health and safety and the
27 environment.

28 (e) The regulations adopted pursuant to subdivision (d) shall be
29 exempt from review by the Office of Administrative Law.
30 Subsequent amendments and changes to the regulations shall not
31 be exempt from review by the Office of Administrative Law.

32 (f) (1) The administrator shall develop and implement
33 regulations and guidelines requiring operators to allow ~~immediate~~
34 *rapid* response to an oil spill by *vessels of opportunity, including,*
35 *but not limited to,* contracted fishing vessels and fishing ~~crews~~
36 ~~crews, and providing for~~ *provide the means for them to participate*
37 *in* regularly scheduled emergency ~~drills~~ *drills, equipment*
38 *deployment exercises,* and training in areas that include all of the
39 following:

40 (A) Shoreline protection.

1 (B) Towing boom and skimmers.

2 (C) Working with minibarges.

3 (D) Loading and unloading equipment from response barges.

4 (2) In developing the regulations, the administrator shall
5 consider *all vessel of opportunity programs, including, but not*
6 *limited to*, the fishing vessel training program funded and
7 maintained by Alyeska's Ship Escort/Response Vessel System,
8 with regard to training, liability, insurance, compensation, and post
9 response vessel cleanup.

10 ~~SEC. 7.~~

11 ~~SEC. 6.~~ Section 8670.67.5 of the Government Code is amended
12 to read:

13 8670.67.5. (a) Regardless of intent or negligence, any person
14 who causes or permits a spill shall be strictly liable civilly in
15 accordance with subdivision (b) or (c).

16 (b) A penalty may be administratively imposed by the
17 administrator in accordance with Section 8670.68 in an amount
18 not to exceed twenty dollars (\$20) per gallon for a spill. Except as
19 provided in subdivision (d), the amount of the penalty shall be
20 reduced for every gallon of released oil that is recovered and
21 properly disposed of in accordance with applicable law.

22 (c) Whenever the release of oil resulted from gross negligence
23 or reckless conduct, the administrator shall, in accordance with
24 Section 8670.68, impose a penalty in an amount not to exceed
25 sixty dollars (\$60) per gallon for a spill. Except as provided in
26 subdivision (d), the amount of the penalty shall be reduced for
27 every gallon of released oil that is recovered and properly disposed
28 of in accordance with applicable law.

29 (d) (1) For a spill of greater than 500 gallons, the penalty
30 assessed pursuant to subdivision (b) or (c) shall only be reduced
31 for every gallon of released oil that is recovered and properly
32 disposed of in accordance with applicable law within two weeks
33 of the start of the spill.

34 (2) Notwithstanding Section 8670.69.7, any increase in the
35 amount of a penalty assessed for an inland spill resulting from the
36 operation of paragraph (1) shall be deposited in the Environmental
37 Enhancement Fund pursuant to Section 8670.70.

- 1 (e) The administrator shall adopt regulations governing the
- 2 method for determining the amount of oil that is cleaned up.

O